

Table of Contents



Administrative Authority	4
Introduction	4
Overview of the Credit	4
Administration and Types of Credit	5
Overview of the Credit Allocation and Review Process	6
Summary	9
Administration Procedure	9
Year 2003-2004 Tax Credit Program	9
Timetable	9
Plan Overview	9
General Administrative Procedures	10
Application	10
Targeted Set-asides	11
Decision Making	12
Amendments & Appeals to the Qualified Allocation Plan	14
Public Comment and Hearing Requirements	14
Annual Credit Available: Per Capita Authority	14
Annual Credit Available: Projects Financed with Tax Exempt Bonds	15
Application Process	16
Introduction	16
Basic Eligibility and Considerations for all Applicants	16
Eligible Applicants	17
Application Period	18
Application Protocol: Competitive Credits	18
Application Protocol: Non-Competitive Credits Issued in Conjunction with tax-exempt Financing	19
Application Requirements: Both Competitive and Non-Competitive Credits	21
Allocation Procedure	25
Evaluation Process	25
“Threshold” Criteria	28
Sponsor Characteristics	29
Financial Feasibility	29
Architectural/Site Review	30
Long-Term Affordability	31
Resident Services	31
Project Evaluation for Appropriate Credit Amount	32

Allocation Limitations.....	33
Documentation Requirements for Projects Awarded Credits	35
Project Denial.....	35
Revocation or Reduction of Housing Credit	35
Public Records Disclosure	36
Policies Specific to LIHTC	37
Policy on Use of LIHTC for Public Purpose.....	37
Policy on HOME/LIHTC Funding Mix	37
Policy on Material Participation by Nonprofit Organizations.....	38
Next Available Project List Policy.....	39
Policy on the Handling of Returned Credits	39
Policy on Applications by Sponsors Who Request Additional Tax Credits after an Initial Award.....	39
Policy on Projects That Are Not Able to Meet the Carryover Allocation Timetable for Project Completion.....	40
Policy on Requirement for Progress Reports	41
Policy on a Substantive Changes.....	41
Subsidy Layering Review Policy.....	41
LIHTC Residential Rental Property Test: Service Enriched Housing	42
Policy on Historic Preservation.....	44
Policy on Market Assessment	44
Policy on Disbursement of Units.....	45
Developer Fee Policy	45
Environmental Review Policy.....	47
Scattered Site Policy.....	47
130% Rule and Community Service Facilities.....	47
Rehabilitation Requirements/Replacement Reserve Policy	48
IRS Audit Guide Policy.....	48
Memorandum of Understanding/IRS Form 8821 Policy	49
Policy on Exceptions/Waiver Requests.....	49
Mixed Use Project Policy.....	49
Mixed Income Policy	50
Policy on Short Term Use of Tax-Exempt Bond Financing	50
Acquisition/Rehabilitation Tenant Certification Policy.....	50
Relocation/Displacement Policy	50
Compliance Monitoring Policy	51
Disclaimer	55
EXHIBIT A	58
QUALITY DEVELOPMENT OBJECTIVES	58
EXHIBIT B	60

PRELIMINARY ARCHITECT and "AS BUILT" CERTIFICATIONS.....	60
EXHIBIT C	61
OREGON AFFORDABLE HOUSING POLICY STATEMENT	61
OREGON AFFORDABLE HOUSING POLICY CRITERIA.....	62
EXHIBIT D	62
IRS MEMORANDUM OF UNDERSTANDING	62
For IRS Use Only	65
Name	65
Employer identification number.....	65
EXHIBIT E.....	69
RD MOU	69
GENERAL INFORMATION.....	70
EXHIBIT F.....	76
RESIDENT SERVICES PLAN	76
EXHIBIT G	80
COMMENT LETTERS WITH RESPONSE LETTERS	80
EXHIBIT H.....	123
PROPOSED CHANGES TO THE QUALIFIED ALLOCATION PLAN FOR 2003-2004 ..	123

LIHTC QUALIFIED ALLOCATION PLAN
For the Period Beginning January 2001 and Thereafter

Administrative Authority

The Low-Income Housing Tax Credit Program was created under the provisions of the Tax Reform Act of 1986 to encourage the development of rental housing for low-income households. Oregon Housing and Community Services ("Department") by Executive Order EO-87-06 from the Governor is the designated administrator of the Low-Income Housing Tax Credit (LIHTC) Program with the responsibility of allocating the State's annual per capita and non-competitive credit authority in accordance with an approved Qualified Allocation Plan. Section 42 of the Internal Revenue Code ("IRC"), as amended, specifies the requirements for said Qualified Allocation Plan. The Department shall further administer the Program in accordance with OAR Chapter 813, Division 90, and shall maintain a record of allocations and the balance of Credit Authority remaining for each calendar year. The records shall account separately for Credit Authority set-asides under OAR 813-90-025.

This Qualified Allocation Plan constitutes a revision of the Qualified Allocation Plan previously approved on March 16, 2001. Public hearings to gather comment on the plan were held on in Portland, in Eugene in Pendleton, after appropriate notice as required by law.

Pursuant to ORS 456.555(6)(a), the State Housing Council (the "Council"), with the advice of the Director of the Department, sets policy and approves or disapproves rules and standards for housing programs of the Department. The Council's Oregon Affordable Housing Policy Statement that outlines these principles is included in Exhibit C. The State Housing Council approved the revised plan contained herein on February 23, 2001. The Honorable John A. Kitzhaber, Governor of the State of Oregon, approved this Qualified Allocation Plan March 16, 2001.

The specific changes made to the document will be included as an Exhibit to the final QAP. The changes were approved by the Oregon State Housing Council on _____ and by The Honorable John A. Kitzhaber, Governor of the State of Oregon, on _____.

Introduction

Overview of the Credit

The Low Income Housing Tax Credit (LIHTC) was enacted by Congress to encourage new construction and rehabilitation of rental housing for low-income households. In establishing the tax

credit incentive, Congress recognized that developers may not receive enough rental income from a low income housing development to: 1) cover the costs of developing and operating the project, and 2) provide a return to investors sufficient to attract the equity investment needed for development. To spur investment, Congress authorized the states, within specified limits; to allocate tax credits to qualifying housing projects. The credits may be shared among owners (equity investors), much as income and losses are shared among business partners for tax purposes. Generally, syndicators recruit the investors, and ownership rights are controlled by limited partnership agreements.

Administration and Types of Credit

The LIHTC program is jointly administered by the Internal Revenue Service (IRS) and state tax credit allocation agencies, such as Oregon Housing and Community Services (the "Department" or "OHCS"). Credits are provided to states to allocate to eligible affordable housing projects. Currently, each state is allocated annual tax credits in an amount equal to \$1.75 per state resident for 2002 with an increase indexed to inflation thereafter. These credits are considered to be under the State's per capita credit authority and are a limited and scarce resource. Oregon is also provided with access to tax credits associated with the State's Private Activity Bond Authority. These credits are not subject to the per capita credit authority but are only available to projects that are financed using tax-exempt bond proceeds. Credit types are more specifically defined below:

- 9% Credits
 - Reflect approximately 70 percent of the qualified basis for new construction or substantial rehabilitation of qualified low income buildings
 - Are available for the cost of a new building construction or a building substantially rehabilitated without a "federal subsidy¹".
 - The 9% credit is subject to the per capita credit authority and is generally awarded annually under a competitive application process called the Consolidated Funding Cycle (CFC). The 9% credit may also be awarded via other competitive processes (such as an RFP) from time to time.
- Competitive 4% Credits
 - Reflect approximately 30 percent of the qualified basis of acquired buildings that are substantially rehabilitated, and for federally funded developments such as Rural Development 515 projects.

¹ Federal subsidy is defined by Section 42 of the IRC as several forms of financing, including, but not limited to, HOME funds (unless certain specific circumstances are present), any debt obligation the interest of which is exempt from tax under IRC§103 or a direct or indirect federal loan, if the interest rate is below the Federal Applicable Rate in effect at the time the loan was made, and RD Section 515 funds.

- Non- competitive 4% Credits
 - Reflect approximately 30 percent of the qualified basis of newly constructed or acquired buildings that are substantially rehabilitated and financed with tax-exempt bond proceeds.

Although the terms 9% and 4% are used, the 9% and 4% figures are approximate. The IRS sets the actual credit percentages on a monthly basis. A project can qualify for one of the three credits or a combination of the credits.

The cost of acquiring, rehabilitating, and constructing a building constitutes the building's eligible basis. The portion of the eligible basis attributable to low-income units is the building's qualified basis. In general, the qualified basis excludes the cost of land, obtaining permanent financing, rent reserves, syndication and marketing. The applicable percentage (that is the 9% and 4% approximations) of the qualified basis may be claimed annually for 10 years as the low income housing tax credit. The amount of LIHTC that may be awarded to a building is based upon the depreciable cost of the building and the portion of the project that low income households will occupy and can be no more than needed to make the project financially feasible.

Overview of the Credit Allocation and Review Process

Under Section 42 of the Internal Revenue Code, the Department is responsible for determining which applicants should receive the tax credit and the dollar amount of credits each should receive. In making these determinations, the Department must comply with **federal requirements** and meet the following program goals:

- Give preference to projects that provide housing to households with the lowest incomes for the longest period of time,
- Assist in affordable housing development in areas with the greatest low income housing needs,
- Provide housing for special needs populations,
- Encourage approaches in design, planning, building and financing of low income housing that maintains quality and long term sustainability, durability and ease of maintenance of affordable units,
- Encourage equitable allocation of credits across the state,
- Encourage resident services and community involvement,
- Provide an allocation of tax credits in an amount sufficient to make the project financially feasible and viable as a low income housing project throughout the compliance period,
- Provide a preference for projects located in Qualified Census Tracts, a designated state or federal empowerment/enterprise zone or Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, encouraged or channeled growth, neighborhood preservation or redevelopment. Any of these activities must contribute to a concerted community development plan,
- Provide a preference for tenant populations of individuals with children and,

- Provide a preference for eventual tenant ownership.

In addition, the Department may supplement these general goals with more specific local goals in order to meet local low-income housing needs. This may include but not be limited to:

- Mixed income projects where appropriate,
- Mixed use projects where appropriate,
- Acquisition and rehabilitation of expiring use projects,
- Housing for families with children,
- Housing near employment centers,
- Housing in Qualified Census Tracts and/or areas where community revitalization is a local priority,
- Other as determined locally or by the Department.

Tax credits are awarded on a per building basis. For a particular building to qualify for tax credits, it must be a part of a low income housing "project". To qualify for consideration for credits a project must:

- be residential rental property
- make an election to restrict both rent and income as follows:
 - Rent: restrict rents (including utility charges) for tenants in low income units to 30 percent of either the 50 percent area median income as adjusted for family size or the 60 of area median income as adjusted for family size. Rent may be further limited based upon the limitation selected and other representations made in the application to the Department,
 - Income: maintain at least 20 percent of the available units for households earning up to 50 percent of area median income as adjusted for family size, **or** maintain at least 40 percent of the available units for households earning up to 60 percent of area median income as adjusted for family size,
- maintain habitability standards,
- if the project involves rehabilitation, there must be expenditures of at least \$3,000 per unit or 10 percent of the unadjusted basis of the building, whichever is greater, and,
- operate under the program's rent and income restrictions for a minimum of 15 years for projects placed in service before 1990 and for 30 or more years for later projects pursuant to extended use agreements.

To apply for tax credits, a developer must submit a detailed proposal to the Department on the form prescribed. The specifics of the application contents are available through the Department and generally are the following:

- Description of the housing project proposed, including the total number of units and the number expected to be LIHTC units

- Sources and uses of funding
- Development costs
- Operating expenses and income
- Project need, market and resident services
- Other information as identified in the application

The Department application process was created in accordance with the requirements of Section 42 of the Internal Revenue Code to select proposals for tax credits awards. The application process is more fully described later in this document. The Department may not award more credits to a project than are required to make the project financially feasible. In evaluating projects, the Department must consider any proceeds or receipts expected to be generated through tax benefits, as well as the reasonableness of development hard and soft costs. In general, the IRS expects the Department to compare the proposed project's development costs with the non-tax credit financing, both private and public. The difference between the costs and the sources to finance the costs, is the financing gap. Tax credits may be used, up to a ceiling, to attract the equity investment to fill this gap.

Once credits have been awarded to a developer, the developer typically sells the credit to private investors. The private investors use the credits to offset taxes otherwise owed to the federal government. The money private investors pay for the credits are paid into the project as equity financing. This equity financing is generally used to fill the gap between the development cost of a project and the non-tax credit financing sources available, such as mortgages, that could be expected to be repaid from rental income.

Owners must place the project in service no later than 12/31 of the allocation year (for competitive projects), unless a Carryover allocation is obtained. If a Carryover allocation is obtained, the project must be placed in service no later than 12/31 of the second year following the original allocation. Investors can claim the credits for each year of a ten year period (called the "credit period") as long as the project is **operating in accordance with the representations made to the Department in its application for credits and in accordance with IRS regulations**. Individual and corporate investors attach an IRS Form 8609 (initially obtained from the Department in the first year of placed in service), "Low Income Housing Credit Allocation Certification" to their income tax returns when they claim the credits.

Once a project has been placed in service, the Department is responsible for monitoring the project for compliance with state and federal requirements concerning household income, rents, project habitability, resident services and other requirements as represented in the application, Declaration of Land Use Restrictive Covenants and other agreements. If noncompliance is discovered, the Department must report the event of noncompliance to the IRS and if the non-compliance is not corrected, the IRS may recapture or deny credit for previously used or issued tax credits. The IRS issues regulations on monitoring requirements that the Department follows. These regulations are

described in the Tax Credit Compliance Guidebook (available from the Department upon request).

Summary

The LIHTC encourages increased affordable rental housing for low income populations by requiring that project owners adhere to below market rents and tenant income restrictions in exchange for an award of a reduced federal income tax liability.

Administration Procedure

Year 2003-2004 Tax Credit Program

For each credit year 2003 and 2004, the Department will award approximately \$6.0 million per year in per capita tax credits for the State of Oregon. A set-aside of 25% of the per capita tax credits for expiring use projects, projects where at least 30% of the project's units are federally rent subsidized (see Targeted Set Asides), has been established.

Timetable

The Department's primary tax credit application period is each fall with a small LIHTC cycle planned for each spring round.

In each calendar year, the Department will hold one application round for forward allocation of tax credits and one application round for current year tax credits. The bulk of tax credits will be forward allocated through the Fall Consolidated Funding Cycle application.

The application for the balance of credits, those that have not been forward allocated, will be due in the Spring Consolidated Funding Cycle application round.

All applications for the Low Income Housing Tax Credits must be in the format as prescribed by the Department. This is available by contacting the Department at 503.986-2054.

Plan Overview

Oregon's Low-Income Housing Tax Credit Qualified Allocation Plan (QAP), establishes the administrative process governing the allocation of federal housing tax credits to qualifying developments that address low income housing priorities throughout the state. This process will be described on the following pages, and will cover the following topics:

- General Administration procedures
- Application process

- Allocation procedures
- Policies specific to LIHTC
- Compliance process

General Administrative Procedures

The QAP utilizes housing priorities pertinent to Oregon as designated by the State of Oregon Consolidated Plan (CP), local jurisdiction Consolidated Plan, or their successor documents in accordance with Department of Housing and Urban Development's (HUD) unmet housing need for the application period, and other information that can demonstrate verifiable housing and community needs and priorities.

Projects which receive Low-Income Housing Tax Credit Allocations will be constructed and rehabilitated in accordance with the Department's architectural standards as well as all applicable local, state and federal laws, local ordinances and building codes. Competitive tax credits will not be awarded without the Department's architectural review and design concurrence. If published Department architectural standards are met, (please refer to the most recent version of the CFC application, multi-family rental housing risk sharing program applications, and elderly and disabled application and/or any additional program materials adopted or used by the department, for current architectural standards) the Department may award non competitive tax credits without final Department architectural review at the Department's discretion. If Department architectural standards are not met, the Department will enter into a dialogue with the project sponsor to determine how and if these variations from standards are appropriate. Program requirements also include, but are not limited to, the Federal Fair Housing Act Amendments of 1988, which provide specific guidelines for multi-family dwellings with respect to minimum accessibility, adaptability and prohibition of discrimination. Project sponsors will be required to obtain a preliminary certification as in Exhibit B from their architect, which must be included on the architectural drawings indicating that the project design meets local, state and federal laws, local ordinances and building codes. At the end of the construction period, an "As-Built" architectural certification as in Exhibit B will be required before the Department releases "Low-Income Housing Credit Allocation Certification," IRS Form(s) 8609. **The Department assumes no responsibility to inspect developments for compliance with the above-stated construction standards and laws.** Department staff will retain the right to visit developments during the construction period, and sponsors must provide access to the development following a 24-hour notification.

Application

During the application process, all applicants for tax credit reservations must supply documentation in accordance with specific application requirements. All materials must be complete and delivered

to the Department by the established deadlines.

Pursuant to amended IRC Section 42, credits reserved for a project may not exceed the amount necessary for the financial feasibility of the project and its viability throughout the credit period. As mandated by IRC Section 42, a project evaluation will be made for each complete application received by the Department, and further evaluations will be conducted for tax credit reservation recipients as they proceed through the allocation process as a means to verify eligibility and the need for the credit allocation.

This Allocation Plan was written to adhere to the established evaluation criteria and preference categories mandated by the federal tax credit program regulations (Section 42), as amended (both proposed and final). All applications will be reviewed under a similar evaluation process. This process is described in the Department's Consolidated Funding Cycle application, 4% Credit Application or any potential RFP. Offers to reserve competitive tax credits will be presented to those projects that receive the highest ranking in accordance with the evaluation process. Offers to reserve noncompetitive tax credits will be presented to those project that meet all Department and federal criteria of award.

Targeted Set-asides

The Department may, from time to time, establish targeted, discretionary set-asides for projects which target specific low-income housing needs or which have certain designated characteristics. These set-asides will be designated in advance as a priority for the Department and will be described in the Consolidated Funding Cycle application or through an advertised Request for Proposals. **If, in response to applications for a discretionary set aside, the Department is not able to fully allocate to viable applications the amount of credits designated, the Department may allocate the remaining Housing Credits to other qualified Projects which, in its judgement, best achieve the general purposes of the LIHTC Program. Applications under the discretionary set-aside must meet all application criteria.**

The Department will maintain the IRS required non-profit set-aside of 10% and the Department discretionary 15% set-aside for USDA Rural Development funded Rural and/or Farmworker projects and 25% set aside for preservation projects. The set-aside for Rural and/or Farmworker projects may be taken advantage of without Rural Development funding in the project as long as the project states a specific preference for a Farmworker population within the context of The General Explanation of the Tax Reform Act of 1986 (H.R. 3838, 99th Congress; Public Law 99-514 (dated 5/4/87)). Preservation projects include but are not limited to those federally financed existing projects where at least 30% of the existing project's units have project based rental assistance or are expiring LIHTC projects which are currently offering rents below market. Projects participating in, but not limited to the following programs, are considered federally financed: USHUD, USDA Rural Development and the Federal Low-Income Housing Tax Credit programs. Preservation projects also include

projects participating in programs that include the replacement of existing affordable housing units including the HOPE VI program.

In 2000, the Department entered into a Memorandum of Understanding with USDA Rural Development. This Memorandum is attached as Exhibit E. If maintaining the targeted USDA Rural Development funded, Rural and/or Farmworker set-asides in the Department's judgement jeopardizes the ability to effectively allocate credit, the Department may at its discretion eliminate or reduce the set-asides and only adhere to the federally-mandated level for tax-exempt organizations.

Decision Making

All LIHTC applications are reviewed by the Department staff for completeness and eligibility. Projects that pass staff review are presented to the Department's Senior Management. The recommendation of the Senior Management is forwarded to the Department Director for approval. Projects seeking additional Department funds may also require Department Senior Management approval and/or State Housing Council approval. Projects are not considered awarded credits until a Reservation and Extended Use Agreement, and where applicable, a Carryover Agreement (for competitive credits) is executed between the project sponsor and the Department. These above mentioned documents are included by reference in the Declaration of Land Use Restrictive Covenants, which establishes the actual LIHTC award and is executed and recorded prior to issuing the IRS 8609 forms. The Reservation Agreement will lock in the credit rate and must be fully executed within 60 days of receipt of the offer letter for a competitive credit project or in the month in which the bonds are sold for a non-competitive credit project. Failure to lock the rate at either of these points in time will postpone the rate lock to the Placed in Service date.

The **state established** selection criteria to be used by the Department in its decision making for credits covered by this document will include but is not limited to:

- context of affordable housing in the community, proximity to services and amenities appropriate to the tenant population, access to transportation, etc
- housing needs characteristics (as defined by a third party market study conducted after a reservation of credits has been made)
- market considerations (see market study policy described herein)
- affordability as compared to market rate (preference for projects with affordable rents that are at least 10% below market rents)
- the financial health of the sponsoring organization (based upon annual audited financial statements)

- project characteristics in relation to the population to be housed
- consistency with Department architectural and design guidelines
- sponsor characteristics, capacity to carry out affordable housing development and compliance
- past compliance record, past development record and quality of completed projects
- proposed management agent record of performance
- participation of local tax-exempt organizations
- housing for families with children
- housing in Qualified Census Tracts and/or areas where community revitalization is a local priority
- achievement of a jobs/housing balance
- achievement of community goals for livability
- achievement of goals articulated in the state or local Consolidated Plan
- tenant populations with special housing needs, and
- public housing waiting lists.

Each of these items will be evaluated in the context of a given proposal and the feasibility of that proposal to fulfill each item.

All tax-exempt bond financed projects requesting an allocation of LIHTC must adhere to the selection criteria as stated in both the QAP and the LIHTC application materials.

Subsection (h)(4) of Section 42 pertaining to projects utilizing tax exempt financing shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan and application materials applicable to the area in which the project is located. **The Department reserves the right to determine, in its sole discretion, whether the Letters of Interest or Intent, Award Letters, or Commitment Letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment. A change in the financing source or financing terms after reservation of credits may, in the sole discretion of the Department, result in all or a part of the credits being recaptured or reduced by, or returned to, the Department.**

Credit allocated to a building cannot exceed amount necessary to assure project feasibility. The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination the Department will examine all aspects of the financial packaging of the application, including but not limited to:

- the sources and uses of funds and the total financing planned for the project,
- any proceeds or receipts expected to be generated by reason of tax benefits,
- the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and
- the reasonableness of the developmental and operational costs of the project. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

Amendments & Appeals to the Qualified Allocation Plan

Upon approval of the overall plan by the Department, the State Housing Council and the Governor, the Department may make minor and technical amendments to this Allocation Plan when changes are necessary to administer the Low-Income Housing Tax Credit Program to effectively serve Oregon's low-income housing needs, and to conform with amendments to IRC Section 42. Major amendments to the QAP require formal approval and a public process.

If any provision of this Allocation Plan (and documents included herein by reference) is inconsistent with the provisions of amended IRC Section 42, including any future amendments thereto, or any existing or new State administrative rules governing the LIHTC Program, the provisions of IRC Section 42 and/or the State Administrative Rules take precedence and the plan will be amended accordingly.

Public Comment and Hearing Requirements

The Draft Qualified Allocation Plan is subject to a 30 day public comment period. Opportunities to review the Draft QAP are announced via mailing to interested parties, Department stakeholder mailings, and an announcement published in the Oregonian Newspaper. The Department accepts both written and oral comments.

Comments obtained through the public comment process are assimilated into the document as appropriate. The State Housing Council approved the revised plan contained herein on March 22, 2002. Public hearings were held on February 4,6,7, 11 and 12, 2002, after appropriate notice as required by law.

Annual Credit Available: Per Capita Authority

The per capita tax credit authority as established by Congress is \$1.75 per person for 2002 and indexed to inflation thereafter, based on population estimates provided by the IRS. The State's per capita tax credit authority, and any amounts of credit returned to the Department, are allocated on a competitive basis, based upon project ratings determined during the Consolidated Funding Cycle

(CFC) application period(s) or special RFP solicitation. Credit awards may also be available from the State's share of the National Pool; competitive applications will also be used to award these credits. All LIHTC, including any increase in the per capita credits, will be governed by this plan.

Annual Credit Available: Projects Financed with Tax Exempt Bonds

Credit for buildings financed by tax-exempt bonds subject to volume cap will be determined as per Section 42(h)(4).

If 50 percent or more of a project's aggregate basis of buildings and land are financed with tax-exempt bonds, the project may receive a maximum 30 percent present value credit calculated against the project's qualified basis without causing a reduction in the State's annual credit authority. Sponsors of projects financed by tax-exempt bonds must make application for tax credits, and such projects will be evaluated in a manner consistent with the competitive credits. These projects will be subject to project evaluations, and the amount of credit offered to said project will be established by the Department and will not exceed the amount necessary for project feasibility. Consideration will be given to the sources and uses of the funds, any proceeds generated by reason of tax benefits, the total financing planned for the project, and the percentage of the housing credit dollar amount used for project costs other than soft costs. Provided the Department approves the sponsor's application, a Tax Credit Determination letter will be issued stating the amount of credit available to the project, and a Reservation and Extended Use Agreement will be executed.

Projects financed by tax-exempt bonds that are requesting credits will be required to complete a specific application. Applications may be filed for projects financed by tax-exempt bonds **at any time during the year**, but sponsors must allow reasonable time for review and response (generally 90 days for review and recommendation). Projects financed by tax-exempt bonds seeking the credit will be denied by the Department if the criteria outlined herein and presented in the required application are not met to the satisfaction of the Department.

Reservation and Extended Use Agreement: Extended Use Period Low Income Commitment

An executed Reservation and Extended Use Agreement shall be required for **all** tax credit allocations. Projects are not considered to have credits reserved until a Reservation and Extended Use Agreement is executed between the project sponsor and the Department. The Reservation and Extended Use Agreement shall specify, among other things, a minimum applicable unit fraction defined by IRC Section 42 (c) (1)(B) and the rent formula to be maintained for the Project to continue to qualify for Housing Credit.

An executed Reservation and Extended Use Agreement shall be enforceable in any State court by any individual who qualified for occupancy by virtue of the income limitation set for such buildings; shall be binding on all successors of the Applicant; and the Declaration of Land Use Restrictive Covenants shall incorporate the Reservation and Extended Use Agreement and shall be recorded

pursuant to State Law as a restrictive covenant.

The Housing Credit allocation may not exceed the amount necessary for the financial feasibility of those units of the Project represented by the applicable fraction at the restricted rents specified in the Reservation and Extended Use Agreement. The Reservation and Extended Use Agreement shall include a commitment to meet the applicable fraction and rent restrictions for at least 15 years beyond the initial 15 year compliance period and may postpone for a specific time the project owner's rights under IRC Section 42 (h)(6) to terminate the commitment after the initial 15 year compliance period.

Application Process

Introduction

The Department has two application processes for the award of LIHTC. One is required for the per capita competitive credit and the other is required for tax-exempt bond financed projects seeking the non-competitive 4% credits. Both applications request identical information in most respects. Where differences exist between the processes, the specific difference will be called out and explained, otherwise, the information below should be considered to be applicable to both processes.

At its discretion, the Department from time to time, may request proposals for applications outside of the normal application process for specifically identified and recognized affordable housing needs.

Basic Eligibility and Considerations for all Applicants

In order to be eligible to receive an allocation of LIHTC, a project must be considered a “qualified low income housing project”. To meet this test, a project must consist of **residential rental property**. For the purposes of Section 42, the definition attributed to “residential rental property” is generally the same as applied to tax-exempt rental housing bonds. This definition focuses on the following issues:

- Residential rental properties must include separate and complete facilities for living, sleeping, eating, cooking and sanitation. Unlike the requirements for units financed with tax-exempt bonds, certain single room occupancy housing used on a non-transient basis may qualify for the credit even though such housing may provide eating, cooking and sanitation facilities on a shared basis.
- In addition to actual residential units, functionally related and subordinate facilities may be included in eligible basis if they are available to all tenants with no additional fees attached to them.
- A scattered site project may be treated as a single project if **all** units in all buildings are rent-restricted. This includes buildings which would (but for their lack of proximity) qualify as a project for the purposes of Section 42, are owned by the same party, have a management plan pre-approved by the Department, and are financed under a common plan of financing.

- If a building consists of both residential and nonresidential areas, the nonresidential portion will not preclude the residential portion from qualifying for credit. Determinations will be made on a reasonable basis to ensure that the costs for the commercial use portion of such a mixed-use building are not in the credit computation. "Community Services Facilities" can be used to generate credit if the facility is designed to serve primarily low income individuals whose income is 60% or less of area median income and the facility does not generate in excess of 10% of the total eligible basis.
- Residential rental units must be available for use by the general public in a nondiscriminatory manner. The Department of Housing and Urban Development (HUD) provide definitions and authority regarding public use and discrimination.

In addition, for a project to qualify for a credit award, it must meet a minimum low income set aside requirement. The minimum set aside requirement must be met no later than the close of the first year of the credit period for such building.

A building owner must elect and fulfill one of the following low-income set asides:

- **the 20/50 test:** at least 20% of the units must be both rent restricted and occupied by tenants with incomes at or below 50% of area median income as adjusted for family size (as determined by HUD)
- **the 40/60 test:** at least 40% of the units must be both rent restricted and occupied by tenants with incomes at or below 60% of area median income as adjusted for family size (as determined by HUD)

The minimum set aside is the election that commits the building owner to a specific income level that will serve to define low income for that building. Under a 20/50 election, an owner that claims 100% of units as eligible for LIHTC must rent all units to households at or below 50% of area median income as adjusted for family size in order to claim 100% of the credit.

Projects previously awarded credits that are currently in their initial compliance periods for pre-1990 projects and in their extended use period for post-1990 projects, will not be eligible to apply for additional credits until the extended use period is over unless the additional credits will provide a clearly demonstrable benefit to the tenants (beyond that promised in the original application).

Projects with serious construction or construction material concerns may be eligible for additional credits within the restrictions of Section 42 and at the discretion of the Department.

Eligible Applicants

There are no restrictions on who may apply to the Department for an allocation of LIHTC, however, project owners who have chronic and uncorrected non-compliance findings, and/or project owners and sponsors who cannot demonstrate the capacity to fulfill requirements based upon representations

made in the awarded application, may not be considered eligible to apply for credits for new projects until all compliance issues are resolved or a Department approved action program has been identified and adhered thereto.

Documentation of Discretion

OHCS may, at its discretion; award credits in a manner not in accordance with the requirements of the Qualified Allocation Plan. Should an award be made that is not in accordance with the requirements of the Qualified Allocation Plan, OHCS must document this allocation in writing to the general public.

Application Period

Applicants for annual per capita competitive credits must submit a complete Application for Low-Income Housing Tax Credits during the specified application periods within the Department's Consolidated Funding Cycle, or as announced by any request for proposals. For projects financed with tax exempt bonds, applications can be received at any time as long as costs have been, or will be, incurred in the calendar year of application. The Department publishes the CFC application rounds.

Application Protocol: Competitive Credits

Project information must be submitted to the Department at each stage of the allocation process as follows:

1. **Initial Application** (initial request for LIHTC award, application must be complete to be considered);

An application fee of \$25 plus \$5 per unit to be considered in the applicable fraction must accompany the Initial Application.

2. **The applicant must acknowledge offer to Reserve Tax Credits (made after review of the initial application); Acceptance of this offer.** 3. **Execution of Reservation and Extended Use Agreement** will establish the parameters of the LIHTC award regarding rent and income restrictions for the project. A fee equal to 5% of the estimated annual allocation of credits must accompany execution of this agreement.

4. **Carryover Allocation** (made if the project will not be completed in the year tax credits are allocated but will be completed within two years of the tax credit issuance). *An application for a carryover allocation must be submitted by December 1 of the year of the tax credit allocation and include all required documentation. However the time for meeting the 10% test and submitting related documentation, will be the later of six months after the date of carryover allocation, or December 31 of the tax credit allocation year. If the owner has not secured title to the land, nor the land is otherwise neither secured or encumbered for the duration of the period of project affordability, the applicant must*

continue to maintain site control until the time required for meeting 10% of the reasonably expected basis. Please contact Oregon Housing and Community Services to obtain the carryover application materials required to apply for a carryover allocation.

5. **Placed-In-Service/Final Application** (once the project has received its Certificate of Occupancy by the local jurisdiction, the equivalent local approval for occupancy, or for acquisition and rehabilitation projects, the date of the completion of the rehabilitation).
6. **Execution and recordation of a Declaration of Land Use Restrictive Covenants.**
7. **Release of IRS form 8609.**

Cost certifications prepared by a third party tax professional such as a Certified Public Accountant or Tax Attorney will be required from all applicants at the time of the Carryover application (i.e., for the 10% test). A cost certification is required at the Placed-In-Service/Final application, as well.

Applications shall include but not be limited to the requisite supporting data listed below (under Application Requirements) and completion of all forms requested by the Department. Applicants must pay the required Department fees as set forth in the application format at each stage of the application process. The Department will have the authority to request additional information from the applicant as necessary. Incomplete applications will not be accepted. Sponsors who have received credit reservations may request additional credits, if credits are available and if there is a justifiable increase in project costs which is directly related to the project's Eligible Basis, only in the year that the credits are initially reserved. Additional credits after the carryover must be awarded competitively and costs must be incurred in the subsequent carryover year of application. If the Department approves additional requests, developer fees will be held to the same dollar amount as reflected in the initial application.

Application Protocol: Non-Competitive Credits Issued in Conjunction with tax-exempt Financing

As a means to ensure that all projects requesting credits in conjunction with tax-exempt bonds are eligible for and have no serious deviation from the QAP, project information must be submitted to the Department at each stage of the allocation process as follows:

1. Provide a copy of any application, pre-application or proposal materials submitted for review to the tax-exempt bond issuer. The Department reserves the right to provide comment to the bond issuer regarding the use of LIHTC in conjunction with tax-exempt bonds. These comments will be restricted to eligibility for LIHTC based upon criteria outlined in the QAP.

2. **Initial Application** (initial request for LIHTC award, application must be complete to be considered);

An application fee of \$25 plus \$5 per unit to be considered in the applicable fraction must accompany the Initial Application.

3. Prior to allocation of bonds from the State of Oregon Private Activity Bond Committee (PABC), an initial application for 4% Low Income Housing Tax Credits must be received and reviewed by the Department. Department comment to the PABC on all tax-exempt bond/4% LIHTC proposals is required prior to bond issuance. These comments will be restricted to eligibility for LIHTC based upon criteria outlined in the QAP.
4. The Department may provide written comment regarding the 4% LIHTC application to the bond issuer prior to final approval of the tax-exempt bonds.
5. Complete applications with adequate materials for evaluation will be heard by the Department Finance Committee for recommendation to the Director.
6. Upon receipt of Finance Committee recommendation and Department Director approval, an Offer to Reserve Tax Credits will be made; Acceptance of this offer must be acknowledged by the applicant within thirty days of its receipt.
7. Execution of Reservation and Extended Use Agreement will establish the parameters of the LIHTC award regarding rent and income restrictions for the project. A fee equal to 5% of the estimated annual allocation of credits must accompany execution of this agreement.
8. Ongoing project monitoring and progress reports are due during the construction and lease up phases of the development
9. **Placed-In-Service/Final Application** (once the project has received its Certificate of Occupancy by the local jurisdiction, the equivalent local approval for occupancy, or for acquisition and rehabilitation projects, the date of the completion of the rehabilitation). IRS Forms 8609 are released after an executed Declaration of Land Use Restrictive Covenants is recorded against the property.

Cost certifications prepared by a third party tax professional such as a Certified Public Accountant or Tax Attorney will be required from all applicants at the time of the Placed in Service/Final application.

Applications shall include but not be limited to the requisite supporting data listed below (under

Application Requirements) and completion of all forms requested by the Department. Applicants must pay the required Department fees as set forth in the application format at each stage of the application process. The Department will have the authority to request additional information from the applicant as necessary. The Department, at its sole discretion, also may require the payment of a review fee. In determining whether or not to charge such an additional review fee, and the amount thereof, the Department may consider factors including, but not limited to the following: (a) the Department's actual or projected costs in reviewing an application for tax credits and the project related thereto; (b) the extent of underwriting scrutiny performed or deemed necessary by the Department; (c) the amount and nature of staff resources utilized or projected for researching or reviewing a proposal; and (d) the amount and nature of outside resources utilized or projected for researching or reviewing a proposal.

Incomplete applications will not be accepted. Sponsors who have received credit reservations may request additional credits if there is a justifiable increase in project costs, which is directly related to the project's Eligible Basis. If the Department approves additional credit requests, developer fees will be held to the same dollar amount as reflected in the initial application.

Application Requirements: Both Competitive and Non-Competitive Credits

A. Application for Offer to Reserve Tax Credits shall include but not be limited to:

1. Complete application form, as prescribed by the Department for the type of credit being requested, including, but not limited to:
 - a. Complete, detailed breakdown of estimated project costs;
 - b. The amount of credit requested, qualified basis calculation, elections made by the Project owner under Section 42 and a complete breakdown of the anticipated proceeds from the sale of tax credits;
 - c. Confirmation of proposed subsidies (e.g., Trust Fund, HOME, CDBG, FHLB, local funding sources, etc.);
 - d. Implementation schedule, including planning, construction and lease-up;
 - e. Complete summary of sources of funds for project;
 - f. Pro forma Operating Statement with corresponding assumptions and justifications;
 - g. Documentation substantiating utility allowance calculations;
 - h. Preliminary Financing Proposals; and
 - i. All application materials and questions must be complete, factual and legible.
2. Description of project, including discussion explaining community need. An independent third party market analysis may be required for all projects receiving a reservation. The Department reserves the right to verify all market information.
3. Legal description of site.

4. A detailed location map, as outlined in the application.
5. Site plan and preliminary architectural plans, as described in the application materials.
6. Evidence of initial site control (e.g., purchase agreement, option, land sale contract, evidence from the local government demonstrating their intent to transfer property).
7. Evidence project is in compliance with local planning and zoning codes applicable to the proposed use of site or evidence of application for conditional use approval, as required by the local jurisdiction. (Note: Sites requiring zoning variances, or where the use is neither allowed out right or conditionally, will not be accepted.)
8. Resume of development team members.
9. Most recent annual financial statement of the sponsoring organization.
10. Certifications or other documentation substantiating evaluation criteria.
11. Applicable Department fees.
12. Nonprofit Organizations (only) - Articles of Incorporation and IRS documentation indicating tax-exempt status has been granted (IRS Form 1023 for 501(c)(3) organizations, Form 1024 for 501(c)(9), or other organizations).
13. A Resident Services Plan for residents in the proposed Project, including a description of how and why those services are appropriate and how those services will be integrated and administered by management.
14. All application information must be complete, factual and legible.
15. A signed certification by the applicant attesting to the validity of the application materials presented.
16. Completion of IRS Form 8821.

Applications under the CFC process, any RFP process and the non-competitive credit process, will be reviewed and ranked according to an evaluation process (see the next section of this document and most current application package), and projects will be selected to receive conditional offers to reserve tax credits. Upon issuing a conditional reservation, the Department will notify the Chief Executive of the designated jurisdiction where the planned housing development is located.

Those projects receiving a conditional offer to reserve tax credits must comply with all conditions outlined in the Offer Letter within 30 days in order to receive a tax credit commitment. Credit reservations offered to, but not accepted by, the Applicant may become available for distribution to other high ranking Applicant(s). Following the offer to reserve credits; an extension beyond the initial 30-day period may be considered should the Department determine that there are circumstances to warrant this consideration.

The Department may at its discretion, establish a waiting list for projects competing for per capita credits. Projects with high rankings that did not receive an offer to reserve tax credits during the initial application period will be eligible to be placed on a waiting list. Waiting list status expires December 31 of the year for which the project sought a credit allocation (not necessarily the year of the application).

Applications for non-competitive tax-exempt bond financed credits will be evaluated based upon criteria identical to the CFC criteria. While applicants will not be competitively scored there will be an expectation that projects meet basic standards of eligibility and community appropriateness. Non-competitive applicants may resubmit applications with corrections.

B. Requirements for Reservation of Tax Credits shall include:

1. Receipt of all applicable items in A above.
2. All documentation required to evidence compliance with the Reservation Agreement conditions, may include but are not limited to:
 - a) Evidence of site control/purchase;
 - b) Letter of community support;
 - c) Conditional commitment of construction/permanent financing (sufficiency to be determined by the Department);
 - d) Architectural plans;
 - e) Evidence of compliance with local zoning codes;
 - f) Level I Environmental Study; and
 - g) Payment of 5 percent Reservation Fee.

NOTE: A Reservation and Extended Use Agreement will be required of all LIHTC applicants.

Applicants for 4% credits in association with tax-exempt bond financing will enter into a Reservation and Extended Use Agreement concurrent to reservation of credits by the Department Finance Committee and meeting any conditions of award. Applicants for 4% credits must enter into the Reservation and Extended Use Agreement no later than 60 days from the date of the Offer Letter or within the month the Bonds are sold. Applicants for credits subject to the state per capita

authority will enter into a Reservation and Extended Use Agreement upon satisfaction of conditions of CFC award as they apply to the credit allocation. The LIHTC fee will be due and payable at the execution of the Reservation and Extended Use Agreement in both cases.

C. Request for Tax Credit Carryover Allocation shall include:

NOTE: Applicants for 4% credits in association with tax exempt bonds do not need to meet carryover requirements.

1. Complete Carryover application;
2. Signed Reservation and Extended Use Agreement;
3. Updated summary of development costs, including updated sources and uses, operating and income statements and other financial information the Department deems necessary;
4. Third party certification of incurred project costs to date, reviewed by a certified accountant or legal counsel, which demonstrates to the Department's satisfaction that the expenditure of 10 percent of eligible project costs have been met.
5. Certification that the sponsor has purchased the property and ownership is vested in the name of the entity requesting the Carryover Allocation; and
6. Evidence of title to or control of the project site. Control of the site shall at a minimum correspond in length of time to the period of project affordability,

On or before **December 1 (or the next business day) of the tax credit allocation year**, tax credit recipients must submit either an application for tax credit "Carryover Allocation" (if the project is still in the construction process), or a final application indicating "Placed-In-Service" (Certificates of Occupancy/Completion have been received and the project is ready for occupancy by tenants). Projects that receive an allocation in the second half of the calendar year have up to six months to meet the 10% test of the Carryover requirement.

D. Application for Tax Credit Allocation (Placed-In-Service Projects) shall include:

1. Final application, including but not limited to:
 - a) Certification of all project costs;
 - b) Updated Operating Statement;
 - c) Certification of use of tax credit proceeds; and
 - d) Completed "Final Application Supplement" including documentation of cost changes, updated sources and uses and a 15-year cash flow analysis.

2. Certificate of Occupancy or the appropriate jurisdiction's Final Inspection Report approving occupancy (indicating the project is suitable for occupancy).
3. Recording of a Low-Income Housing Tax Credit Declaration of Land Use Restrictive Covenants.
4. Copy of Cost Certification prepared by a third party such as a certified accountant or legal counsel. Please contact Oregon Housing and Community Services, Housing Resources Section for a sample cost certification format.
5. Certification from the project or inspecting Architect that the project has been built in accordance with the final plans submitted to the Department, i.e., the project is built in accordance with all applicable local, state and federal laws, and those requirements of the Department set forth in this Allocation Plan. (See Exhibit B for format.)
6. Copy of Placement Memorandum, Syndication Agreement or Limited Partnership Agreement indicating tax credit proceeds available to the project together with a contribution schedule.
7. Copy of on-site property management plan acceptable to the Department and permanent lender.
8. A copy of a site map with each building identified by address and listing the units by number to be found in each building.

NOTE: All LIHTC applicants are required to complete a final application. Any changes from the original application are subject to Department approval. It is strongly advised that this approval be sought prior to or at a minimum in conjunction with submitting the final application. Any change to developer fee from the original application to the final application will require written approval from the Department prior to the final application. Approval will be at the discretion of the Department and will not be unreasonably withheld for justifiable increases in the scope of work, so far as the developer fee does not exceed the Department's approved limitations.

Allocation Procedure

Evaluation Process

All projects, including those competing for set-asides through requests for proposals, and both competitive and non-competitive credit applications, will be evaluated according to a process that includes consideration of the State's low-income housing priorities as designated by the State

Consolidated Plan, a local level Consolidated Plan, if applicable, (or successor document(s) to the Consolidated Plan) HUD's unmet housing needs, and/or other information that can demonstrate verifiable housing and community needs and priorities, required under amended Section 42 of the Internal Revenue Code (IRC) and any other information the Department deems pertinent to the selection process as identified in the request for applications. IRC Section 42 specific requirements include consideration of:

- A. Project Location;
- B. Housing Needs Characteristics;
- C. Project Characteristics;
- D. Sponsor Characteristics;
- E. Tenant Population with Special Housing Needs;
- F. Tenant populations of individuals with children
- G. Projects intended for eventual tenant ownership
- H. Public Housing Waiting Lists; and, **as a State of Oregon requirement,**
- I. Participation by Local Tax Exempt Organizations, and
- J. Resident Services.

Section 42 (m)(B) further states that preference in allocating housing credits be given to:

- projects serving the lowest income tenants, and,
- projects obligated to serve qualified tenants for the longest period of time.

IRC Section 42 also requires a comprehensive market study of the housing needs of the low-income individuals in the area served by each housing credit project. The study must be conducted at the developer's expense before the credit allocation is made. A disinterested party approved by the allocating agency must conduct the study.

Department required information includes:

Market Assessment and Target Population Needs

- Documented market description
- Documented analysis of market trends
- Measurable differences in proposed rents and market rents (preference for a minimum of 10% below market rents)
- Evaluation and understanding of the local affordable housing need
- Housing gap addressed
- Compliance with the Consolidated Plan
- Impact on existing affordable housing developments

Affordable Housing Solutions

- How the solution is appropriate for the population to be served (amenities, unit sizes, special features, etc.)
- Extent to which rents in the project are lower than market rents for the area

- Period of affordability (extensions beyond the minimum program requirements)
- Project location in terms of services (commercial and social) and appropriateness of site
- Solution meets program funding requirements of housing credits and other subsidies
- Whether units are to be rented to households with net incomes not exceeding two times the monthly rent.
- Project location in relation to employment opportunities

Resident Services

- Method used to identify the specific service needs of the target population
- Description of proposed services including projected results in measurable terms
- Extent of collaboration and coordination of ongoing services after project completion

Community/Neighborhood Support

- Community awareness of the project as demonstrated by public or neighborhood meetings or hearings
- Plan to address community concerns
- Development contributions by the community
- Service contributions by the community that are appropriate to the tenant population

Organizational Capacity

- Capacity of the sponsor/development team in relation to the scale of the project
- Prior project experience of the applicant
- Prior project compliance with program regulations
- Readiness to proceed
- Asset management of existing projects as evidenced by acceptable project compliance monitoring reports
- Organization financial health

Financial Feasibility

- Source of financial estimates
- Reasonableness of assumptions
- Reasonableness of construction and development costs for the community and construction type
- Reasonableness of operating cost
- Grants and tax credit program requirements
- Development fee reasonableness
- Demonstrated need for Department resources

Program Considerations

- Meets specific program criteria
- Minimal impact on existing residential or commercial tenants
- Reasonable request of program resources
- Eligible uses of resources

More specific guidelines and criteria regarding the evaluation of applications can be found in the application format (the Consolidated Funding Cycle and/or the 4% Credit Application and/or the Multi-Family Rental Housing Risk Sharing Program and Elderly and Disabled Loan Program Applications and/or any additional program materials adopted or used by the department).

The above evaluation criteria are presented as considerations the Department makes for each LIHTC proposal. Because each project is so unique, there is no set standard for the criteria; rather, each is considered in the context of the given proposal.

“Threshold” Criteria

The Department has adopted “thresholds” to insure that the funds available are given to projects best able to produce housing in a timely manner.

LIHTC applications will be reviewed for compliance with the following four “thresholds”. The bond-financing threshold is applicable only to 4% credit applications. Applications, which do not meet any or all of the following criteria, will receive a 25-point deduction from their score.

Bond Financing If 50 percent or more of a project's aggregate basis of buildings and land are financed with tax-exempt bonds, the project may receive a maximum 30 percent present value credit calculated against the project's qualified basis without causing a reduction in the State's annual credit authority. If the project is less than 50% financed with tax exempt bonds, the credits may be claimed only on the portion of the project being financed by tax exempt bonds. Sponsors of projects financed by tax-exempt bonds must make application for tax credits, and such projects must address housing needs set forth in the Qualified Allocation Plan. These projects will be subject to project evaluations and the amount of credit offered to said project will be established by the Department. Consideration will be given to the sources and uses of the funds, any proceeds generated by reason of tax benefits, the total financing planned for the project and the percentage of the housing credit dollar amount used for project costs other than soft costs. Provided the Department approves the sponsor's application, a Tax Credit Commitment will be issued stating the amount of credit available to the project.

Site Control All applicants must demonstrate site control. Evidence of site control can include: fee simple title, evidence from the local government demonstrating their intent to

transfer property, or a contract or agreement demonstrating site control, including an option on the property. Control of the project site for a period of time not less than the time period of project affordability is also acceptable.

Zoning Applicants must attach a letter from the local planning department indicating that the property is properly zoned for the use intended, or the intended use is allowed with conditions and application has been made for a conditional use permit. Under no circumstances will anything other than a letter from the local planning department be accepted as evidence of proper zoning. Projects requiring zone changes or annexations do not meet the threshold.

Site Review and Environmental Review All applicants must complete the Environmental Review Checklist. The Department's Regional Field Representative (RFR) will review the information on the form during the site review. The Environmental Review Checklist is included in the application materials.

Sponsor Characteristics

Sponsors must be able to demonstrate an understanding of the Low-Income Housing Tax Credit Program, and proficiency with housing related development. No sponsors with limited multi-family experience will be excluded from the application process as long as they engage the services of qualified development team members. Additional consideration may be given to program sponsors who have consistently completed their projects in accordance with representations made in their applications, and who are maintaining their project in compliance with tax credit program policies and procedures and federal regulations.

The Department may reject applications from previous program participants who have failed to demonstrate proficiency with the LIHTC Program or other government-sponsored housing programs. The Department may also reject or discount an application from previous program participants who have failed to complete their projects in accordance with their applications and/or certified plans presented to the Department or other public or private allocating agencies, or who have failed to effectively utilize previously allocated tax credits, or who have been found to be in chronic non-compliance with program rules as evidenced by Department or other public or private allocating agencies project monitoring.

Financial Feasibility

Tax credits for a project may not exceed the amount necessary for the financial feasibility of the project. Financial feasibility analysis will include a comparison with current market costs and an assessment of the reasonableness of projected cost components and operating expenses. The Department's project evaluation will utilize common lending standards and underwriting criteria for evaluating multi-family projects. Basic criteria includes but is not limited to:

- **Primary** Debt Service Ratio no lower than 1.10 and no higher than 1.20 (unless accompanied

by an explanation from the lender)

- Maximization of Loan to Value ratios and documentation thereof *from the project lender*
- Construction hard costs per square foot are consistent with industry standards for similar projects unless adequately justified by community constraints or building type
- Developer fees in accordance with Department policy (as stated in the department's application instructions)
- Reasonable operating expenses, as determined by the Department for the project size, type and population to be housed, *including*:
 - Operating reserves of 4 to 6 months operating expenses (minimum). Reserves less than or in extreme excess to this will be approved on a case-by-case basis with justification.
 - Replacement reserves of no less than \$200 per unit per year for new construction and no less than \$300 per unit per year for rehabilitation may be used as guidelines, however, a more precise measure of reserves needed will come from a carefully prepared Reserve for Replacement schedule.
- Acquisition price for acquisition of buildings or land shall be limited to the appraised value as determined by an independent third party licensed appraiser
- Ability of the project to demonstrate long term viability (minimum of a 15 year cash flow projection)
- Tax Credit pricing at current market rates.

Note: Tax exempt bond projects with funding gaps requesting Consolidated Funding Cycle funds to fill the gaps may be required to apply for these funds during the normal CFC application round.

The Department reserves the right to determine, in its sole discretion, whether the Letters of Interest or Intent, Award Letters, or Commitment Letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment. A change in the financing source or financing terms after reservation of credits may, in the sole discretion of the Department, result in all or a part of the credits being recaptured or reduced by, or returned to, the Department.

Architectural/Site Review

In response to a legislative mandate for promoting good quality in the development, design and construction of publicly funded housing, the Department has adopted *Architectural Requirements* for all LIHTC projects. These requirements are minimum standards that apply to new construction and to the renovation of existing structures. They promote long-term livability and the wise use of public investment by addressing Site Design, Building Design and Unit Design issues. The standards are included in the CFC **and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**

Once the formal application is received, the Department reviews projects twice before construction begins. Preliminary Architectural Review is made during the Schematic and Design Development phases of a project. Final Architectural Review is then made when Drawings and Specifications are nearly complete and before the project is submitted for building permit.

Sometimes, after studying the requirements and preparing a rough feasibility study, the sponsor and architect may have remaining questions about the Architectural Requirements and the Architectural Review Process. In that case a pre-application conference with the Department may be useful before submitting all the documents necessary for the formal application.

Changes made to architectural designs after the award or reservation of credits must be documented and are also subject to department architectural approval.

Long-Term Affordability

Additional consideration will be given to projects, which agree to an extended use period beyond the minimum 30 years. This obligation does not release owners from the Extended Use commitment under IRC Section 42 regulations for 15 years beyond the initial 15-year compliance period for a total of 30 years.

Resident Services

Sponsors, who receive Department resources, including but not limited to LIHTC, must include in their affordable housing development a provision for residents to access services appropriate to the identified needs of the target population. The anticipated outcomes of the resident services plans are:

- Through coordination, collaboration, and community linkages, provide resident the opportunity to access appropriate services which promote self-sufficiency, maintain independent living, and support residents in making positive life choices; and
- To effectively maintain the fiscal and physical viability of the development by incorporating into the ongoing management appropriate services, which address resident issues as they, may arise.

Project evaluation will reward projects offering appropriate resident services. Sponsors are encouraged to build services provisions into their operating expenses.

Resident services are not intended to be limited to services provided on site, residents at risk or with special needs, nor does it make participation in services mandatory for residents. It is intended to be a support system integrated into the housing and available to all residents. Resident services can be incorporated into the operation and management in a variety of ways. Common to many models, however, are the goals of helping residents achieve greater social and economic self-sufficiency and an enhanced quality of life. While service enriched housing offers assistance to residents facing a crisis, it should also focus on addressing problems and linking residents to community resources. The most effective service enriched housing encourages and supports resident participation in the

decision making process.

In considering resources available for resident services, sponsors should investigate public and private social service agencies, schools, community directories and consultation with existing community residents. United Way, city or county government, libraries and non-profit agencies often operate resource and referral services. Beyond Shelter, a non-profit agency committed to combating chronic poverty, welfare dependency and homelessness has developed a handbook regarding service-enriched housing.

The required resident services plan is described in the Consolidated Funding Cycle **and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**

Project Evaluation for Appropriate Credit Amount

After projects are evaluated and ranked in order of their score, they will be presented to the Department Senior Management and/or Finance Committee. The Senior Management and/or Finance Committee will provide a recommendation to the Director. Non-competitive applications will be evaluated based upon the same criteria, and presented to the Department Finance Committee for recommendation to the Department Director.

Project evaluations will be conducted to determine the appropriate amount of tax credits for which the project is eligible. Pursuant to amended IRC Section 42 of the Internal Revenue Code, the amount of credit available for a project may not exceed the amount necessary for its "financial feasibility." Regulations require that allocating agencies conduct these evaluations at three specific times to determine the amount of applicable credit:

- A. Upon receipt of the **Consolidated Funding Cycle Application, or Initial 4% Credit Application;**
- B. Prior to providing a Tax Credit **Carryover Allocation** (for competitive, per capita credit requests); and
- C. No earlier than 30 days prior to awarding the Tax Credit **Placed-in-Service** Certification, before the issuance of IRS Form(s) 8609.

During each evaluation, the Department will determine the amount of credit to be reserved committed or allocated by considering the following components of each project:

1. Total project costs.
2. Funding sources available to the project:
 - a) Loans

- b) Grants
 - c) **Tax Credit Proceeds** (The Department will use current market guidelines, as well as sponsor representations, to estimate proceeds anticipated from the sale of tax credits. A copy of the Placement Memorandum or Syndication Agreement must be provided to the Department no later than the date upon which the sponsor applies for Placed-In-Service allocation. If said document has not been finalized, a draft Placement Memorandum or Syndication Agreement or Limited Partnership Agreement will be acceptable. When actual proceeds are determined, there may be an adjustment to the credit reserved or committed. Credit will not be increased beyond the amount originally reserved unless application amendments are submitted and the request successfully competes for an additional award, or, in the case of non-competitive credits, the request is reviewed and approved by the Department Finance Committee. Tax credits will not be allocated to projects in excess of the amount necessary to fund the equity gap as determined by the Department using the value of the credit (expressed as a percentage of the total 10-year credit) established at the time of application. If actual project costs or funding sources differ substantially from the projections submitted in the application, the Department may reduce the final credit allocation or the Owner may establish project reserves to offset the deficit for allowable purposes. The conditions for such reserve accounts will be determined on a case-by-case basis, and must be approved by the Department.)
 - d) **Owner Equity** (Owner equity is often in the form of deferred developer fees. Developer fees may not exceed 15 percent of total project cost as per the developer fee policy as described later in this document. The Department requires full disclosure of all fees paid to parties related to the sponsor and/or developer. The developer fee shall include developer overhead, profit, and consultant fees for services normally performed by the developer.)
3. Percentage of the housing credit dollar amount used for hard costs (actual construction costs, including builder and contractor's fees).
 4. Projected operating income and expense, 15-year cash flow and tax benefits.
 5. **Maximum tax credit eligibility.** (Additional eligible basis will be considered for projects located in HUD's designated "Hard to Develop Areas" and "Qualified Census Tracts," if deemed necessary for the viability of a project by the Department. An evaluation process that examines the financial feasibility and public purpose of a given project will limit the amount of tax credits allocated to a project.)
 6. **Debt Service Coverage Ratio.**
 7. **Project reserves.** (Four to six months operating reserves at a minimum. Reserves less than or in extreme excess of this will be approved on a case-by-case basis. Considerations will be made for lender and equity investor requirements.)

Project costs will be evaluated against Department criteria and industry cost standards, as well as average costs from competing projects. The Department may request substantiating documentation. Projects with excessive costs will be subject to adjustment by the Department.

Allocation Limitations

During the application process, the following limitations shall apply:

- The per capita tax credit cap for projects will be \$700,000 in annual credits. Project sponsors, developers, or any "related entity" (An entity is a "related entity" if a relationship exists between the sponsor or developer and such entity which would result in the

disallowance of losses between related persons under Sections 267 or 707(b) of the Internal Revenue Code of 1986 as amended.) utilizing Oregon's Low-Income Housing Tax Credit Program must comply with this ceiling. The \$700,000 project ceiling may be waived if sufficient applications are not received and approved to utilize the full amount of credits available. The \$700,000 may also be waived for a project accessing credits outside of the competitive process (i.e.: in conjunction with tax-exempt bond financing).

- Tax Credit Offers to Reserve and/or Carryover Allocations may not be transferred without Department approval. For projects with a nonprofit sponsor applying for the 10% nonprofit set-aside, it is required that the nonprofit applicant(s) materially participate in the development of the project; any changes in General Partner status without the consent of the Department may result in forfeiture of the Offer to Reserve or Carryover Allocation. (Material participation is described later in this document.)
- The Department will diligently enforce all agreements, warranties and representations of the sponsor regarding the project, especially those made in the Initial Application as well as those made in the Reservation and Extended Use Agreement. Failure to perform or demonstrate progress may jeopardize the reservation for Carryover Allocation, tax credits previously awarded, and potential future allocations.
- Tax Credit Reservations are made based upon representations in sponsor applications. Once a Reservation and Extended Use Agreement has been offered or executed, written approval for any changes to the project must be obtained from the Department. This approval shall be made in a timely manner and will not be unreasonably withheld. Changes requiring such approval include but are not limited to:
 - Changes in the project's composition may be approved provided the project continues to maintain an evaluation ranking equal to or greater than those awarded to the original project. A re-evaluation of the project is necessary if there are material changes to the project scope. Applicants will be required to submit an amended application, and an additional application fee may be required.
 - Composition of the partnership.
 - Lender/Equity Investor Changes.
 - Changes in the unit mix or number of units.
 - Changes in cost.
 - Changes in management agent.
 - Any others the Department in its discretion deem to be substantive changes.
- No executive, employee or agent of the Oregon Housing and Community Services Department or any other official of the State of Oregon, including the Governor thereof,

shall be personally liable concerning any matters arising out of, or in relation to, the allocation of Low-Income Housing Tax Credits, or the approval or administration of this plan.

Documentation Requirements for Projects Awarded Credits

Once credits have been offered to a project, the following documentation will be required:

- Reservation or Determination letter will be sent to the applicant and an acknowledgment of the reservation or the applicant will return determination to the Department.
- A Reservation and Extended Use Agreement and Hold Harmless Agreement will be executed between the Department and the applicant.
- Tax Credits fees are due and payable.
- Monthly Progress Reports will be required.
- An approved Carryover Application and Agreement will be required for competitive credits subject to the state allocation cap. Non-competitive credits need not complete the Carryover paperwork.
- An approved Final Application and executed Declaration of Land Use Restrictive Covenants will be required prior to the release of the IRS form 8609 by the Department.

Project Denial

The Department reserves the right to disapprove any application for tax credits if, in its judgment, the proposed project is not consistent with the goals of providing decent, safe and sanitary housing for low-income persons as set forth in the Department's enabling legislation or the project does not meet the requirements of IRC Section 42 as amended, all regulations promulgated thereunder, and/or polices and preferences stated in the Qualified Allocation Plan. The Department may impose additional conditions on project sponsors for any project as part of the credit reservation process.

Revocation or Reduction of Housing Credit

The Department may revoke an offer of a credit allocation or may terminate a Reservation and Extended Use Agreement if the Department determines that:

- the proposed project owner will not obtain a construction loan or building permit, or close its equity agreement in a timely manner;
- the proposed project has not made adequate progress toward Carryover requirements;
- the proposed project will not be placed in service by the date mutually agreed upon;
- the proposed project financing is not committed as indicated;
- the applicant has submitted misleading or false information in the application to obtain funds or in other correspondence with the Department;
- the project does not fulfill the representations made in the application and no attempt to

- contact the Department to describe the situation has been made;
- or other just causes at the Department's discretion.

The Department may reduce the allocation amount identified in the Reservation and Extended Use Agreement prior to the issuance of the Declaration of Land Use Restrictive Covenants or Form 8609 if:

- upon analysis, the amount of credit originally assumed appropriate is in excess of the amount needed for financial feasibility,
- there has been a reduction in basis,
- the tax credit rate has changed since the original application and the rate was not locked at the Reservation and Extended Use Agreement.

The Department may revoke a reservation of credits if the Department, in its discretion believes (based on analysis), that more than 10% of the total estimated project costs will **not** be expended within six months of the allocation date or end of the calendar year in which the Carryover Allocation is made (whichever is later). Furthermore the Department may revoke a reservation of credits if the Department in its discretion believes the project will not be placed in service within two years following the calendar year in which the a Carryover Allocation is made or by the dates mutually agreed upon.

Public Records Disclosure

Sponsors may request and receive a summation from the Department with respect to the evaluation of their specific project application; however, the written evaluation documents and related details of other projects will not be available. ORS 192.502(23) exempts Oregon Housing and Community Services from releasing to the public the following records, communications, and information submitted to the Department by applicants for and recipients of loans, grants and tax credits:

- personal and corporate financial statements and information, including tax returns
- credit reports
- project appraisals
- market studies and analysis
- articles of incorporation, partnership agreements and operating agreements
- commitment letters
- project pro forma statements
- project cost certifications and cost data
- audits
- project tenant correspondence requested to be confidential
- tenant files relating to certification
- housing assistance payment requests

The purpose of ORS 192.502(23) is to protect from public disclosure the detailed personal and business information that applicants and businesses must submit to the state as a condition of participating in the subsidized housing program.

Policies Specific to LIHTC

Policy on Use of LIHTC for Public Purpose

The legislative history of the LIHTC program provides that residential units must be available for use by the general public. Regulations require that use by the general public be consistent with all applicable federal, state, and local law. The department reserves the right to take any action it deems appropriate if the developer, general partners (or any affiliate), management agent or any other material participant, in the department's judgement, is or has been found to be in violation of any applicable law including, but not limited to fair housing, housing accessibility or nondiscrimination laws. Material participants, but is not limited to, any entity that materially affect, in the department's opinion, the development or the operation of the property.

Departmental remedies may include, but are not limited to, rejection of the LIHTC application, termination of processing, failure to issue an IRS form 8609, or issuance of an IRS form 8823. The department may rely upon its own investigations or other information the department deems appropriate.

Policy on HOME/LIHTC Funding Mix

There are several rules that apply when combining HOME funds (this applies to ANY HOME funds, not simply OHCS HOME funds) with Low-Income Housing Tax Credits. Two of the most common rules are listed below. It is recommended that you work with your tax credit attorneys to determine how these rules would specifically effect your project.

- Including HOME funds in basis If HOME funds are being granted to the general partner in a limited partnership and in turn then loaned to the limited partnership and in order for the HOME funds to be included in basis, one of the following must occur:
 - HOME funds must be loaned to the limited partnership at an interest rate that equals or exceeds the federal applicable rate and the loan must be able to be repaid at loan maturity. The loan can be a deferred payment loan, but the sponsor must demonstrate how the loan and interest accrued will be repaid at its due date.

OR

- HOME funds can be loaned at a rate that is less than the federal applicable rate, and remain in basis if at least 40% of the total units (not just the HOME units) in **each building** are occupied by persons whose income is 50% or less of median income and

rented at rates affordable to persons whose income is 50% or less of median income.

- **130% Bonus Area** If the project is located in a hard to develop area or a designated census tract (130% bonus area), and the project is to receive both the 9% credit and the 130% bonus, then:
 - HOME funds must be loaned to the limited partnership at or above the federal applicable rate.

It is highly recommended that project sponsors wishing to combine HOME funds with LIHTC consult their tax accountant and tax attorney for guidance.

Native American Housing Assistance and Self-Determination Act and LIHTC

Native American Housing Assistance and Self-Determination Act funds may be combined with LIHTC and receive a 9% credit if the project elects to require that at least 40% of the total units (not just the HOME units) in **each building** are occupied by persons whose income is 50% or less of median income and rented at rates affordable to persons whose income is 50% or less of median income.

Policy on Material Participation by Nonprofit Organizations

For partnerships, turnkey or joint ventures that have as a general partner or co-general partner a local tax-exempt nonprofit organization, the Department expects material participation by the said local tax-exempt nonprofit organization to include, but not be limited to:

- Participation in developer fees and excess cash flows. Favorable consideration will be given to cases where non-profit participation in developer fees and excess cash flow is at least 25 percent. Excess cash flow will be defined here as cash flow remaining after contractual and/or partnership arrangements for cash flow sharing is taken into account.
- Participation in project oversight and decision making, such as direct involvement in application preparation, direct involvement in discussions for construction, bridge and debt financing, a close working relationship with the property management firm, and tenant selection. The project must demonstrate an ability to further the non-profit's charitable mission and there should be an ability on the part of the non-profit to override any fiduciary duty to the owners when that duty conflicts with the charitable mission of the non-profit.
- Provision of assistance that empowers the non-profit and enables it to gain expertise.
- It is further required that the said non-profit NOT be affiliated with or controlled by a for profit organization.

Material participation of the non-profit **must** be demonstrated if the applicant is applying under the 10% non-profit set aside.

Next Available Project List Policy

A list will be established from projects not funded during the established competitive application process to assist the Department to fully allocate all available tax credits. Projects will be eligible to be on the list only if:

- they were not funded in the most recently past current year's funding round
- they received a score high enough to be considered a viable project
- have not re-applied as a 4% non-competitive project and received a credit award.

The list status expires December 31 of the year for which the project sought a credit allocation (not necessarily the year of the application).

If a funded project cannot meet Carryover, or becomes ineligible for the credits for any other reason, the next available project on the list will be notified. If this project can demonstrate that it can meet Carryover requirements, the project will be awarded credits. Other Department funding sources may also be awarded to activated list projects based upon their availability.

Policy on the Handling of Returned Credits

Annual per capita credits returned after January 1 and prior to October 1 of any given year would be reallocated as follows:

- To projects with a forward commitment that can meet carryover requirements,
- To projects on an established waiting list that can meet carryover requirements,
- To projects solicited through a specific Request for Proposals process.

Policy on Applications by Sponsors Who Request Additional Tax Credits after an Initial Award

Sponsors who receive an initial reservation of annual per capita LIHTC may request additional tax credits, if the project has experienced an increase in costs and eligible basis exists to allow the credits to be issued. Requests for additional per capita credits may require an application via the competitive funding round (CFC process). The Department will evaluate all requests and may or may not grant such requests depending upon the need for the additional credits, other potential funding sources available and the availability of credits for allocation by the Department. Applications for additional credits must be made prior to the building(s) being placed in service.

The application for additional credits must include an explanation of the following:

- A. The process used to determine the cost estimates provided with the initial and subsequent application.
- B. Justification by line item of the differences in cost between the original and the current Uses of Financing. (A copy of the initial Sources and Uses of Financing and revised Sources and Uses must be attached.)
- C. Other measures considered or implemented to mitigate cost increases, including but not limited to:

- value engineering,
 - other reductions in project specifications,
 - rent increases to allow added debt service (as applicable for the population to be served),
 - other sources of financing examined other than Department funds (provide documentation of denials),
 - a reduction in the scale of the project and/or,
 - a deferral or reduction in developer fees.
- D. Contingency plans if the Department rejects the application.

The Department will amend and restate all program documents, including but not limited to the Reservation and Extended Use Agreement, for all applicants who receive additional tax credits AND for sponsors who might need a reallocation of credits for technical, legal and other reasons who meet the 24-month project completion schedule and Carryover Agreements.

Projects previously awarded credits that are currently in their initial compliance periods for pre-1990 projects and in their extended use period for post-1990 projects, will not be eligible to apply for additional credits until the extended use period is over unless the additional credits will provide a clearly demonstrable benefit to the tenants (beyond that promised in the original application).

Project owners who have chronic and uncorrected non-compliance findings may not be considered eligible to apply for credits for new projects until all compliance issues are resolved or a Department approved action program has been identified and adhered thereto.

Policy on Projects That Are Not Able to Meet the Carryover Allocation Timetable for Project Completion

Sponsors who are not able to perform according to their project schedules for any reason **after** they have received carryover allocations will be required to return tax credits previously awarded and re-compete in the application process.

Please note that an inability to utilize previous awards is a factor in the evaluation of sponsor characteristics and capacity. The Department may reject applications from previous program participants who have failed to demonstrate proficiency within the LIHTC Program or other government-sponsored housing programs. In addition, the Department may also reject or levy penalty points against an application from previous program participants who have failed to complete their projects in accordance with their applications and/or certified plans presented to the Department, or who have failed to effectively utilize previously allocated tax credits.

Policy on Requirement for Progress Reports

In the interest of utilizing Oregon's available credits fully, the Department will require each applicant for whom tax credits have been reserved to demonstrate through monthly reports that the project is making satisfactory progress towards completion. The progress reports are required to report on critical events and timelines such as site acquisition, meeting or failing to meet the 10% test, loan closings, groundbreaking, construction start, construction completion, etc. Each report must describe the applicant's actual progress in comparison to the original schedule submitted with the application, or any approved updated schedule. Progress reports should also report changes in project costs resulting from both savings and cost overruns.

Progress report forms will be made available to each successful applicant of Department resources.

Policy on a Substantive Changes

During the entire tax credit process (during application, during review and especially after award), sponsors must keep the Department informed regarding substantive changes to the project being considered. Sponsor proposed substantive changes in the

- financing plan,
- rent structure,
- population to be served,
- assumed or awarded reservation amount,
- credit pay-in and/or equity investor,
- development team,
- partnership composition,
- management agent,
- or other aspects the Department deems substantive,

upon which the initial analysis or approval of the application was based must be submitted to the Department for consideration before being finalized. Failure to report or failure to secure Department approval of substantive changes may result in rescission or modification of the credit reservation amount or carryover allocation and may impact future considerations of LIHTC applications.

Subsidy Layering Review Policy

For projects which receive, either directly or indirectly, financial assistance from U.S. Department of Agriculture Rural Development (RD) or Department of Housing and Urban Development (HUD), the Department is required to follow guidelines established by RD and HUD with respect to the review of the financial assistance provided to the project. The subsidy layering review will include a review of the amount of equity capital contributed to a project by investors, and a review of project costs including developer fees, consultant fees, contractor's profit, syndication costs and rates, etc. The Department will take any other actions required of it, as set forth in the administrative guidelines

and amendments published by RD or HUD, or otherwise required by state or federal law. HUD subsidy-layering guidelines were published in the December 15, 1994 Federal Register. Subsidy layering guidelines used by the Department are available from Oregon Housing and Community Services, Housing Resources Section.

Specifically:

If there is no identity of interest (Identity of interest is a financial, familial, or business relationship that permits less than arm's length transactions. It includes but is not limited to existence of a reimbursement program or exchange of funds, common financial interests, common officers, directors or stockholders; or family relationships between officers, directors, or stockholders, between the developer and general contractor/builder), the following general contractor/builder's profit applies:

- General contractor/builder's profit may not to exceed 14% of total hard construction costs (less profit)

If there is an identity of interest, general contractor/builder's profit may not exceed 10% of total hard construction costs. (Builder's profit (general contractor/builder's profit) is defined as profit, overhead, general requirements and project management fees associated with the hard construction of the project.)

Please Note: The Department will evaluate the cumulative profit received by developer/General Contractor in identity of interest cases and, based on industry standards and comparable projects, may reduce profits considered excessive.

LIHTC Residential Rental Property Test: Service Enriched Housing

The Department is interested in working with project sponsors to create housing that fills a need in a given community. Frequently, this need is identified as service enriched housing such as Assisted Living Facilities (ALF) and other service intensive housing. As a means to ensure compliance with Section 42 of the Internal Revenue Code, all units, including ALFs and others, considered in basis for Low Income Housing Tax Credits must meet the residential rental property test as follows:

- Unit must be available to the general public. A unit will fail this test if, for instance, it is provided for use solely by members of a social organization or by an employer for its employees. LIHTC regulations adopt a general use requirement similar to the HUD housing policy governing non-discrimination as evidenced by HUD rules and regulations (See Table A). Therefore, preferences to certain classes of tenants (e.g., the homeless, disabled and/or handicapped) will not violate the general use requirement if such preference does not violate any HUD policy governing non-discrimination.

Notwithstanding the above, any unit that is a part of a hospital, nursing home, sanitarium, lifecare facility, manufactured dwelling park used on a transient basis or intermediate care facility for the mentally or physically handicapped is not for use by the general public and

is not eligible for credit under Section 42.

- Unit is not used on a transient basis. This test is met if the initial lease term for an LIHTC unit is a minimum of 6 months.
- Residential rental property may include any facilities that are functionally related and subordinate to the property, such as community rooms, if such spaces are available to all residents of the development free of charge.

LIHTC and Assisted Living Facilities or other Special Use Housing

As mentioned above, a hospital, nursing home, sanitarium, lifecare facility, manufactured dwelling park used on a transient basis or intermediate care facility that provides significant services other than housing is generally not eligible for credit under Section 42. (Please also see Revenue Ruling 98-47.

However, if the following tests are met, the furnishing of services may not disqualify some of these properties as residential rental property:

- Services are optional. Services may be considered optional on a facts and circumstances basis. Services are optional if:
 - payment for the service is not a condition of occupying the residential unit;
 - residents have the option to decline the services, or;
 - residents have the right to obtain services from an alternative provider.Services are not optional if:
 - they are continual or frequent medical or nursing services, or;
 - they are required as a condition of tenancy and payment for services is not included in the LIHTC rent (within the LIHTC rent limits).If services are not optional, the cost of services will be included in the LIHTC rent calculation and the unit may not qualify as a LIHTC unit and may be removed from basis.
- Charges for services that are not optional to low income tenants must be included in the gross rent calculation. In this case the combined rent and service charge cannot exceed the maximum LIHTC rent for the unit.

An exception is made for federally assisted projects for the elderly and handicapped (PLR 8921035). This exception applies to facilities authorized under 24 CFR § 278 to provide mandatory meals. To qualify for this exception, all provisions of 24 CFR § 278 must be met.

- Supplemental payments made by a state under its SSI program directly to the owner for the

purpose of allowing low income elderly to live in assisted living facilities may be excluded in the determination of the tenants gross rent under Section 42 if that payment is made under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home or intermediate care facility for the mentally or physically handicapped (Treasury Regulation §1.42-11(b)(3)(ii)(A)).

Policy on Historic Preservation

The Department encourages all project sponsors working with properties 50 years old or older to consult with the State Historic Preservation Office to determine the historic significance of the building. If the buildings are determined significant, the Department encourages preservation of the historic elements in the most efficient and effective manner possible. The State Historic Preservation can be reached at: State Historic Preservation Office, 1115 Commercial Street NE Suite 2, Salem OR 97301-1012, telephone: 503-378-4168 x231, fax: 503-378-6447.

Policy on Market Assessment

Beginning with all credits allocated for the year 2001; the Department, as per IRC Section 42 requires a comprehensive market study for each Low Income Housing Tax Credit project. The study must be conducted at the developer's expense and must be completed and approved by the department prior to a credit allocation for 4% projects and one month prior to carryover for projects receiving LIHTC credits awarded on a competitive basis. A disinterested party approved by the allocating agency must conduct the study.

LIHTC applicants must contact the Department to obtain a list of approved market analysts. The analysts **should** conduct the market study in such a manner as to address the issues described in the Consolidated Funding Cycle Application, 4% LIHTC Application or Multi-Family Rental Housing Risk Sharing Program Application, Elderly and Disabled application and/or any additional program materials adopted or used by the department. The market study may be included in an appraisal provided the appraiser has followed the instructions provided by the department (refer to instructions to appraiser) and is prepared by a department approved market analyst. Following its review of the market study, the Department, in its sole discretion, may request additional market information from the applicant and additional comment from the local government before reserving tax credits, and may decline to reserve credits if the proposed project has a potential to disrupt the local housing market.

It is a preference of the Department that, the local government is informed by the sponsor on the conclusions of the market study concerning the demand for this specific project in the market area and detailing any disagreements it may have with the market study.

The Department may reject an application and revoke the credit reservation if it determines, in its sole discretion, that based on information submitted in the applicant's market study or information obtained by the Department from other sources, market demand and conditions do not justify the project as proposed. The Department will consider all facts and circumstances in making this determination, including the possible disruption caused by unneeded units entering the market.

Policy on Disbursement of Units

It is the policy of the Department that all housing credit developments have affordable units disbursed throughout the development as well as throughout unit sizes. Projects will be considered unacceptable if:

- All affordable units (LIHTC eligible units) are located in one building, if a multi-building project.
- All affordable units are restricted to one unit type (i.e., number of bedrooms or square footage) in projects that have a variety of unit types.

Projects meet the Department disbursement policy if:

- LIHTC eligible units are located in all buildings of a multi building project.
- There are LIHTC eligible units available in all unit types.

Projects being built in phases should also meet the above disbursement policy for each phase of the development.

Developer Fee Policy

The Department acknowledges the applicants' needs to include fees, which support sound development practices and develop capacity. The developer fee includes other "soft" costs which go into putting a project together (e.g. development consultant fees, project management fee, developer's overhead and profit, etc) and any developer fees chosen to be deferred. The Department has established a maximum developer fee of 15% on all projects. However, the reasonableness of fees will be evaluated based on the risk and complexity of the proposed development

Applications, which include limited or no cash development fees, may be financially infeasible. The department recognizes the need for a project's viability to take into consideration cash development fees to cover unforeseen contingencies and the project's need to meet underwriting criteria. The department realizes that circumstances, often beyond the control of the developer or sponsor, may change the amount of the cash and/or deferred developer fees. Finally project sponsors may be able to adjust deferred and/or cash development fees depending on the sponsor's ability to develop a project within budget and the anticipated development period.

The department realizes that deferred developer fees, as originally proposed, often fill a portion of a project's development cost gap. This figure often fluctuates significantly as the project progresses. If additional resources are identified that reduce the deferred developer fees the department encourages sponsors to provide additional project amenities and/or reduce project debt.

A general framework adopted by the Department to determine developer's fee reasonableness is included in the CFC Application, 4% LIHTC Application, and **and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**

An increase in the total developer's fees through the course of development will require the prior approval of the Department and must be justified by a change in the scope of the development. Sponsors failing to request prior approval are at risk of Department resources being recaptured.

A large difference in the amount of deferred and cash development fees represented at final application or cost certification versus original application may be considered a misrepresentation of the original project application IF the department is not provided with a reasonable explanation for the difference. The department realizes project cost changes occur during the development process the department will consider a deviation of the lesser of 25% or \$200,000 from the deferred or cash development fees represented in the original application to the department to be de minimus and thus acceptable without departmental approval. Changes in the deferred and/or cash development fees beyond the lesser of 25% or \$200,000 must be presented to the Department for approval 30 days prior to final application(s) or cost certification(s).

The calculation of developer fees as a percentage of project cost must net out the development fee from the total project cost. Specifically:

$$\frac{\text{Developer Fee}}{(\text{Total Development Cost} - \text{Developer Fee})}$$

Deferred developer's fees will not be included in computations for the reasonableness of the proposed fee. *Deferred developers fee is defined by the Department as a portion of the developer fee that is being taken over a period not to exceed fifteen years and is being paid out of project cash flow. Developer fee paid from a final equity payment is not considered a deferred fee.* Under no circumstances can the combined total of deferred fees and fees earned through the course of construction exceed the maximum of 15%.

To be included in tax credit basis, deferred developer fees must be due and payable at a date certain generally within a time period that does not exceed 15 years. If fees are

permanently contributed to the project, they must be paid to the developer and then contributed to the project if the fees are to be included in tax credit basis.

Developer's fees for acquisition and rehabilitation projects will be calculated for reasonableness on acquisition and all other costs. In general developer's fees will be limited to a maximum of 5% of the acquisition costs and fees for all other costs including rehabilitation as defined for other projects. However applicants for complex acquisitions such as expiring use projects or projects with Uniform Relocation Requirements (as required by the HOME Program) may be able to justify a higher developer fee due to the complexity of the transaction. In such instances, it is recommended that Department approval be requested and obtained prior to submission. Sponsors should contact their HCS Regional Field Representative for more information.

The Department's Finance Committee will make the final determination of developer fee reasonableness and the State Housing Council in instances where tax credits is coupled with other Department grants or loans in excess of \$100,000.

Environmental Review Policy

All tax credit project applicants are required to complete and submit the Department's environmental review form. This form can be found in all of the LIHTC application materials.

Scattered Site Policy

The Department will entertain proposals for scattered site housing developed under Section 42 if the project includes buildings which would, but for their lack of proximity, qualify as a project for purposes of Section

To qualify the following Federally stipulated conditions must exist:

- Project must be under common ownership,
- Project must be developed under a common plan of financing,
- 100% of the units in each building must be rent restricted.

To be considered developed under a common plan of financing, the scattered site project must be considered as a single project by all financing partners.

130% Rule and Community Service Facilities

The IRS stipulates certain areas as "difficult development areas." These areas, published in each application for LIHTC, allow a developer to request 130% of credits derived from the basis calculation. The Department will, at its sole discretion, determine the application of the 130% bonus to a project located in a designated "Difficult Development Area (DDA)". The award of the bonus

will be made based upon the amount of credits required to make the project financially feasible and will not be unreasonably withheld.

The 130% bonus is also available to projects located in HUD determined Qualified Census Tracts. The Qualified Census Tracts are defined as census tracts in which 50% or more of the households are at or below 60% of area median income, as well as census tracts with a poverty rate of 25% or higher.

Eligible basis costs for new construction and rehabilitation only can qualify for this basis increase. Acquisition costs are specifically excluded by IRS code from the 130% bonus.

Federal regulation permits the inclusion of a “community service facility” to serve non-residents in adjusted basis of a portion of a low-income building (not exceeding 10 percent of the eligible basis) located in a qualified census tract. Space could be used for purposes, including but not limited to, child daycare, senior programs and job training. Community service facilities are defined as facilities that are designed to primarily serve low-income households (60 percent or less of area median income.) Project employees could also use the facilities.

Rehabilitation Requirements/Replacement Reserve Policy

- The Department requires all applicants for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment. These standards are included in the **CFC and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**
 - . These standards are included in the CFC and Multi-Family Rental Housing Risk Sharing Program Applications and/or any additional program materials adopted or used by the department.

Please consult 24 CFR part 35 for additional specific information regarding lead-based paint requirements or contact OHCS LIHTC Program Representative.

IRS Audit Guide Policy

The Internal Revenue Service has adopted a Final Audit Guide. The Final Audit guide is the document used by the IRS to offer the IRS examiner technical support for identifying and developing issues related to IRC Section 42. The guide consists of chapters covering specific LIHTC topics and issues that describe in some detail how the Service is examining credits issues such as basis and developer fee. From time to time, the Department will rely upon the Audit Guide for assistance in evaluating projects. Developers should be aware of the contents of the Guide. It can be found on the Internet at www.novoco.com/audit_guide.htm or www.irs.gov/bus_info.

Memorandum of Understanding/IRS Form 8821 Policy

As the Housing Credit Agency for the state of Oregon, OHCS is responsible for taking and verifying LIHTC applications from developers, as well as monitoring health and safety violations and tenant qualifications, while the IRS is responsible for administering the program nationwide. The IRS is the only agency that can revoke or adjust the amount of LIHTC allocated to a given project. The IRS through the audit process disallows credits, which were not properly used to build affordable housing. Since disallowed credits cannot be re-used, OHCS has an interest in ensuring the proper usage of credits to increase the supply of affordable housing. Although the IRS and OHCS share responsibility for the Credit program in Oregon, tax payer information cannot be disclosed to OHCS unless authorized by the taxpayer on IRS Form 8821, Tax Information Authorization (Rev. 9-98).

All applicants to the State of Oregon must provide with their applications a signed IRS Form 8821. The Form is found in the LIHTC application materials. The Form 8821 names the housing credit agency (OHCS) as the appointee to receive tax information. The IRS will provide OHCS with federal tax information relating to LIHTC, including audit findings and assessments, and enabling OHCS to make a more informed allocation of LIHTC.

The process:

- OHCS will require developers to complete Form 8821 as a condition of application for an allocation of LIHTC. The developer will name OHCS as the appointee to receive tax information. A completed Form 8821 will be forwarded to the IRS by OHCS within 60 days of receipt.
- Pursuant to Internal Revenue Code Section 6103(c) after receiving Form 8821, the IRS provides OHCS with any federal tax information pertaining to the LIHTC, including findings and assessments, for the tax periods specified on the Form. This includes a review of the Business Master File, revenue agent reports, and other sources of account data.
- OHCS will ensure that information provided by the IRS under the agreement is used solely for the purpose of awarding LIHTC and the information will be safeguarded by OHCS to prevent improper disclosure according to state and federal statutes.

Policy on Exceptions/Waiver Requests

All Department policies other than those mandated by Section 42 are considered to be guidelines and all may be excepted for justifiable reasons. To be considered for an exception or waiver of applicable policies or criteria, applicants, lenders or syndicators must request the waiver or exception in writing with a full justification.

Mixed Use Project Policy

The Department is interested in pursuing mixed residential/commercial developments where

appropriate. As a part of the LIHTC application, the Department will require full disclosure on the financing, ownership and management of the commercial spaces in addition to all required information for the residential spaces. Sponsors must be prepared to provide detailed sources and uses statements that clearly delineate the commercial and residential costs and sources of funds.

The Department will underwrite both residential and commercial spaces in its evaluation of the project and the project's future feasibility. Release of the IRS Form 8609 will be contingent upon successful leasing of the commercial space, a guarantee of commercial space rent, or a clear demonstration that the commercial financing is in all respects separate from the residential financing.

Mixed Income Policy

The Department is interested in pursuing mixed income projects where appropriate. Note that all LIHTC requirements and state policies must be met.

Policy on Short Term Use of Tax-Exempt Bond Financing

As a general principle, the Department is not in favor of the use of tax-exempt financing subject to the bond cap, on a short-term basis. However, in specific situations where the use of such short term financing on a portion of the tax exempt financing can provide a demonstrated benefit that furthers affordability, the Department is willing to make an exception to this principle. In evaluating this benefit, the Department will examine the affordability of a project with and without the use of the short term financing, and will, in its sole discretion, determine if the affordability warrants the use of the tax-exempt financing. All projects proposing such a use must adhere to requirements of Section 42 as well as state requirements.

Acquisition/Rehabilitation Tenant Certification Policy.

The tenant certification process for acquisition/rehabilitation projects is a difficult dilemma. The IRS has provided new guidance regarding whether and when it is necessary to do initial certifications of tenant income for both the acquisition and rehabilitation credits. Their response was "at acquisition". Be advised that regardless of the State's opinion on the necessity of completing certification, the IRS will make their own decision should they audit any given project. Please consult your tax advisor regarding this issue.

Relocation/Displacement Policy

Permanent displacement or relocation due to Department funding is strongly discouraged. If any relocation or displacement might occur as a result of a project applicants must include the following.

- Provide a complete survey of existing tenants using the format provided by OHCS. This

survey must include third party income verification and be completed and approved by the department prior to the close of project financing.

- Indicate if over crowding exists in any of the units.
- Describe the type of displacement that will occur, permanent or temporary (if temporary can the work be achieved without displacement?)
- Describe the process used to inform tenants of displacement or relocation.
- Describe the proposed relocation/displacement process. Indicate compensation and advance notice provided to those subject to displacement.
- Describe the availability of comparable units in the community.
- Indicate the source of funds for relocation expenses.
- Describe any community policies regarding tenant displacement or relocation
- Describe how tenants with disabilities will be assisted regarding relocation or displacement
- Describe how the completed units will be affordable to income qualified tenants
- Provide monthly documentation on each resident to be relocated or displaced. This information should be included in monthly project reports to OHCS.
- Copies of all notices and documentation shall be forwarded to OHCS.
- The relocation plan must be reviewed and approved by the Department
- For project receiving federal funds, the Uniform Relocation Act (URA) may apply. The URA requirements will supercede the above.

Compliance Monitoring Policy

As the allocating agency for the State of Oregon, OHCS is responsible for compliance monitoring of all Low Income Housing Tax Credit projects for adherence to Section 42 as well as adherence to conditions stated in the project application. The Department is responsible for establishing compliance monitoring procedures and must report incidences of noncompliance to the Internal Revenue Service (IRS). Monitoring each project is an ongoing activity that extends throughout the Credit compliance period (at least 30 years, except in pre-1990 projects that have a 15-year compliance period). The Department is responsible to monitor not only for compliance with Section 42 of the IRC, but also for state requirements as represented in the application for LIHTC. Non-compliance with state requirements is grounds for the issuance of a non-compliance finding with the IRS. Note: Projects that have funding sources obtained from the Department in addition to the credit will be monitored for the most restrictive requirements of the combined programs. Owners must be aware of the differences in program regulations.

The Compliance Monitoring Process is based upon the following components:

- IRC Section 42 and promulgated regulations including IRS Regulation (TD 8859), also known as the "Final Rule"
- Oregon Administrative Rules for LIHTC Programs
- Qualified Allocation Plan for projects with Building Identification Numbers (BIN) beginning

with OR90 and following

- X The Compliance Manual
- X Compliance Training Workshops
- X Owner's Certification of Continuing Project Compliance and Project Fees
- X Utility Allowance Documentation
- X Use of Correct Rents and Incomes
- X LIHTC Compliance Forms
- X Lease and Tenant Selection Criteria Review and Approval
- X Tenant File Review and Project Site Inspections
- X Exemptions & Special Circumstances
- X Record Keeping and Record Retention
- X Noncompliance/Plans to Correct Noncompliance/Form 8823
- X Monitoring Fees
- X Resident services Proposed in Application
- X Uniform Physical Conditions Standards as per HUD (24 CFR 5.703)

The owner of a qualified low income tax credit project is required to comply with the following:

- **Record keeping.** The owner is required to maintain accurate records for each building in the development. These records must include:
 - The total number of residential rental units in the building, including the number of bedrooms and the square footage of each residential rental unit.
 - The total number of low-income units in the building.
 - The total number of occupants in each low-income unit.
 - The rent charged on each residential rental unit in the building, including any utility allowance.
 - The low-income unit vacancies in the building.
 - The rentals of the next available unit in each building and to whom rented.
 - The character and use of the non-residential portion of the building that was included in the building's eligible basis. (I.e., facilities that are available on a comparable basis to all residents and for which no separate fee is charged for the use of the facilities).
 - Documentation regarding the eligible and qualified basis of each building as of the end of the first year of the tax credit period.
 - Income certification for each low-income household.
 - Documentation supporting each household's income certification (third-party verifications, asset certification, etc.
 - The original local health, safety or building code violation reports or notices that were issued by the State or local governmental unit.
 - Documentation that all units are available to the general public.
- **Record Retention.** Owners are required to keep all records for each building for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that

year. However, the records for the first year of the credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

- **Certification.** The owner must certify the following, under penalty of perjury, at least annually through the end of the compliance period:
 - The project meets the requirements of the 20/50, 40/60 or other elected set-aside test.
 - There was no change in the applicable fraction, as defined in IRC Section 42(c)(1), of any building, or, if so, a description of the change.
 - The owner has received an annual resident certification form from each low-income household and documentation to support that certification.
 - Each low-income unit in the project is rent restricted.
 - Each building is suitable for occupancy per federal, state and local health, safety and building codes.
 - There has been no change in eligible basis, as defined in IRC Section 42(d), of any building, or, if so, the nature of the change.
 - All resident facilities included in the eligible basis of any building are provided on a comparable basis without a separate fee to all residents of the project.
 - Resident services are being provided as described in the application for credits, or suitable alternative resident services are being provided.
 - If a low income unit becomes vacant during the year, reasonable attempts are made by the owner to rent it to a resident with a qualifying income and while it is vacant, no units of comparable size or smaller are rented to residents not having a qualifying income.
 - If any low-income household's income increases above the limit (140% of the area median income adjusted for family size), the next available unit of comparable size or smaller will be rented to households having a qualified income.
 - A Declaration of Land Use Restrictive Covenants is in effect for all post-1990 projects.
- **Review.** Monitoring of a project will occur as follows:
 - An on-site inspection of all buildings in a project will occur by the end of the calendar year following the year the last building is placed in service. This review will include a physical inspection, review of the low-income certification and documents supporting the certification as well as all rent records for each tenant. The inspection will include an assessment of habitability standards.
 - At least once every three years, the Department will conduct an on-site inspection of each building in a project and will review tenant files for at least 20% of the project's low-income units. This review will include a physical inspection, review of the low-income certification and documents supporting the certification as well as all rent records for each tenant. The inspection will include an assessment of habitability standards.
- Annually the Department will visit at least 20 percent of the tax credit projects in the state and will review the resident certification forms, the supporting documentation pertaining to the

certification and the rent records for at least 20 percent of the low income units in the project. Selection of units whose records are to be inspected will occur only at the time of the on site visit and not before. In addition, the Department will annually conduct a physical unit inspection of at least 20 percent of the units in a project. Random samples of both projects and units will be selected for review each year. The inspection will include an assessment of habitability standards.

- In addition, at the time of these monitoring reviews the Department will also review for compliance with State or local building codes and for compliance with the Fair Housing Act.
- When a project is selected, the Department will:
- Perform the on-site file, property and unit inspections;
- Inform the owner as soon as possible of any finding of noncompliance with regard to such review.
- **Liability.** Compliance with the requirements of Section 42 and state regulation is the responsibility of the owner. The Department is not liable for an owner's non-compliance.
- **Correction of Non-Compliance Conditions.** The Department will provide written notice of non-compliance to the owner if:
- Annual Certification Report with attachments is not received by the due date.
- The project is found to be out of compliance, through inspection, review or other means, with the provisions of Section 42 or state regulations.

The owner will have 45 days from the date of notice to supply any missing information for the Annual Certification Report. The owner will have 45 days from the date of notice to correct any non-compliance issues. The Department may grant an extension of up to 90 days if good cause is demonstrated as determined by the Department.

At the end of the allowable correction period, the Department is required to file Internal Revenue Service Form 8823, "Low Income Housing Credit Agencies Report of Noncompliance," with the IRS. All non-compliance issues must be reported whether corrected or not. The Department will explain the nature of the non-compliance or failure to certify and state whether the non-compliance has been corrected. The IRS will make any determinations as to the applicability of recapture penalties, not the Department.

- **Compliance Monitoring Fees.** The IRS now requires the inspection of projects every three years, therefore effective 1/1/2001 monitoring fees will be \$25.00 per unit per year and will apply to all LIHTC projects regardless of the placed in service date.

As provided in the IRS compliance monitoring regulations, the Department has a right to review tenant files on-site and/or to perform physical inspections of LIHTC Projects as deemed necessary throughout the 30-year compliance period (15 years for pre-1990 projects).

The owner of a project in non-compliance will be responsible for reimbursing the Department for all expenses associated with the non-compliance reviews. Expenses for conducting additional on-

site inspections will include but are not limited to:

- The standard mileage rate in effect at the time of the re-inspection
- Any overnight expenses
- A meal allowance of \$30 per day
- A charge of \$55 per hour to review tenant files or re-inspect units

The Department will also charge \$55 per hour with a \$55 minimum to review documents forwarded to the Department to correct non-compliance. Any additional expenses incurred by the Department as it relates to an owner's non-compliance shall be the responsibility of the owner.

More information on monitoring can be found in the Department's LIHTC Compliance Manual, available from the Asset and Property Management Section at OHCS.

Other items that will be requested by the Department as a means to track project health include:

- Audited (if available) otherwise, unaudited annual financial statements for each sponsor and project
- Annual project operating statements showing income and expenses as they relate to the real property
- Documentation that all state requirements are being met, especially resident service provision. This can be done via a certification from the owner of the activities conducted in the previous year.
- Advance notice sufficient to allow the Department (at its discretion) from time to time to review qualifications must be given prior to any change in the Management Agent. . NOTE: it is not required that the Department approve changes in management agent, however, it is imperative that the Department be notified of such changes, and have time to review the new management agent qualifications as a means to maintain consistency in compliance monitoring.

Disclaimer

Issuance of a Tax Credit Reservation, Tax Credit Carryover Allocation or Placed-In-Service Allocation (IRS Form 8609) by the Department shall not constitute or be construed as a representation or warranty as to the feasibility or viability of the project, or the project's ongoing capacity for success, or any conclusions with respect to any matter of federal or state income tax law. All tax credit allocations are subject to the Internal Revenue Service regulations governing the tax credit program, and applicants are responsible for the determination of their project's eligibility and compliance. If statements in this QAP are in conflict with the regulations set forth in Section 42 of the IRC or its amendments, the regulations shall take precedence. Applicants should not rely solely upon this guide or the Allocating Agency's interpretations of the IRC requirements relating to the tax credit.

